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THE
BILLS OF EXCHANGE ACT,
1882.

(45 & 46 VICT., C. 61.)

An Act

TO CODIFY THE LAW RELATING TO BILLS OF EXCHANGE,
CHEQUES, AND PROMISSORY NOTES.

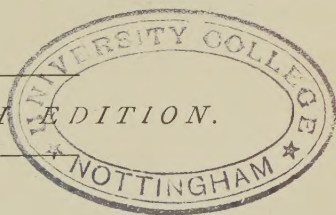
With Explanatory Notes and Index, and the
Amending Acts of 1906, 1914, and 1917,

BY

Sir M. D. CHALMERS, K.C.B., C.S.I.

*(Draftsman of the Act, and Author of a Digest of the
Law of Bills of Exchange, &c.)*

FOURTEENTH EDITION.



London :

WATERLOW & SONS LIMITED, LONDON WALL
1918.

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DUNSTABLE AND LONDON.

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PREFACE TO FOURTEENTH EDITION.

Another Edition having been called for, the opportunity has been taken to revise again the notes and references, and to add in the Appendix the text of the Bills of Exchange Act, 1914, and the Bills of Exchange (Time of Noting) Act, 1917.

M. D. CHALMERS.

November, 1917.

P.S.—In the reprint of this Edition, Sect. 36 of the Finance Act, 1918 (amending the Stamp Act, 1891, as regards bills and cheques), has been added.

M. D. C.

October, 1918.

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1919-20.

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INTRODUCTION TO FIRST EDITION.

The Bills of Exchange Act, 1882, which codifies the law relating to Bills of Exchange, Cheques, and Promissory Notes, was passed on the 18th of August, and came into immediate operation.

Under these circumstances, a handy edition of the Act, with an index and short explanatory notes of a non-technical character may perhaps be acceptable to merchants, bankers and others who will frequently have to consult the provisions of the Act in the hurry of business. I hope later on to publish a legal treatise on the Act, dealing more completely with the whole law on the subject of negotiable instruments, and comparing the Act with the foreign codes.*

The Act applies to the whole of the United Kingdom, and subject to a single exception, enacts one and the same body of law for England, Ireland, and Scotland. The exception is contained in s. 53, which preserves, as regards Scotland, the Scotch rule as to the operation of a bill as an assignment of funds. The Scotch attach great importance to this rule, but the English merchants and

* See now Chalmers' Digest of the Law of Bills of Exchange, &c. 7th Edition, 1909.

bankers were not prepared to accept it for England, although its adoption was recommended by the Royal Commission of 1855.

Besides assimilating the law relating to bills, notes, and cheques for the three branches of the United Kingdom, the Act is of some importance in another respect. It marks a new departure in English legislation. It so happens that it is the first piece of codification that has found its way on to the statute book. Several attempts have been made to get codifying Bills through Parliament, but hitherto they have been unsuccessful. The measure therefore must be regarded as an experimental one—if it should work well, and prove useful to the mercantile community, the precedent set by it will doubtless again be followed, and other branches of the law will in their turn be codified.

The history of the Act is as follows. The Bills of Exchange Bill, 1881, was drafted by me last year under instructions from the Institute of Bankers, who acted in the matter in conjunction with the Associated Chambers of Commerce. The object of the Bill was to reproduce, as exactly as possible, the existing law on the subject in a codified form, leaving to a later stage any amendments that might seem desirable and feasible. The Bill was introduced into the House of Commons by Sir JOHN LUBBOCK (the President of the Institute), and, after having been read a second time, was not further proceeded with that Session. During the recess criticisms

on the measure were invited from various quarters, and many very valuable suggestions were received. This year the Bill was again introduced without alteration, and then referred to a strong Select Committee of 19 members. Sir FARRER HERSCHELL was elected chairman, and the Committee included, among others, Sir J. LUBBOCK, Mr. C. BARING, Mr. R. B. MARTIN, Mr. FRY, Mr. COHEN, Q.C., Mr. WHITLEY, MR. GIBSON, the Solicitor-General for Scotland (Mr. ASHER) and Mr. WILLIAMSON. The Bill as originally drafted applied only to England and Ireland, but the Committee were empowered to extend it to Scotland. They took the evidence of Sheriff DOVE-WILSON, an eminent Scottish commercial lawyer, who warmly advocated the application of the measure to Scotland. It seemed ridiculous that in the case of an instrument so migratory as a bill or note the rights of the parties to it should vary according as it was made on the right or the left bank of the Tweed. It was found that English and Scotch law for the most part differed only on minor points of detail, and the measure was extended to Scotland.

The Bill was introduced in the House of Lords by Lord BRAMWELL, and again referred to a Select Committee, which consisted of the Law Lords, with the addition of Lords WOLVERTON and BALFOUR OF BURLEIGH. Lord BRAMWELL presided over the Committee, and Lord FITZGERALD took charge of the measure in its later stages.

The scheme of the Act is this :—first, Bills of Exchange are dealt with by themselves ; then, the provisions peculiar to cheques are inserted, and it is provided that subject to those provisions, the provisions applicable to a bill on demand shall apply to cheques. A similar course is then pursued with reference to promissory notes.

The main provisions in which the Act either consciously alters the law, or affirms rules not always recognized in practice, are, it is believed, the following, namely :—Sect. 4 (2). Sect. 7 (2) and (3). Sect. 8 (1) and (3). Sect. 12. Sect. 14 (1). Sect. 15. Sect. 18 (3). Sect. 33. Sect. 36 (3). Sect. 39 (4). Sect. 41 (2). Sect. 44 (2). Sect. 49 (6). Sect. 51 (2). Sect. 61. Sect. 62. Sect. 64. Sect. 73. Sect. 74. Sects. 91-95. Sect. 100.

It is to be noted that the Act expressly saves and preserves the Bankruptcy and Stamp Laws and the laws relating to Joint Stock Companies and the privileges of the Bank of England and the Bank of Ireland. Questions relating to bills and notes which are not specifically dealt with by the Act are still to be governed by the common law, which includes the law merchant, that is to say, the usages of trade as recognized and enforced by the courts.

The main material provisions of the Stamp Act have been added in the Appendix.

M. D. CHALMERS.

22nd August, 1882.

Bills of Exchange Act, 1882.

45 & 46 *Victoria, chap. 61.*

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THE BANKERS', INSURANCE MANAGERS' AND
AGENTS' MAGAZINE.

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SUBSCRIPTION, **21/-** PER ANNUM.

An Act

To Codify the Law relating to Bills of
Exchange, Cheques, and Promissory
Notes.

45 & 46 Vict., c. 61.

BE it enacted by the Queen's most Excellent
Majesty, by and with the advice and consent of
the Lords Spiritual and Temporal, and Commons
in this present Parliament assembled, and by the
authority of the same, as follows :

[18th August, 1882.]

PART I.

PRELIMINARY.

1. This Act may be cited as the Bills of Exchange Short Title.
Act, 1882.

This Act applies to the whole of the United Kingdom, that is to say,
England, Ireland and Scotland. Sect. 4 extends also to the Channel
Islands and Isle of Man.

It deals only with bills, notes and cheques, and does not directly
affect other negotiable instruments, such as negotiable bonds or scrip,
nor does it affect the laws relating to the issue of bank-notes. See
the savings in sect. 97.

2. In this Act, unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

As to delivery or notification to complete an acceptance, see sect. 21.
As to the requisites of a valid acceptance, see sect. 17.

“Action” includes counter claim and set off.

See sects. 30, 57, and 70.

“Banker” includes a body of persons whether incorporated or not who carry on the business of banking.

See sect. 60 as to forged indorsements, and sects. 73 to 82 as to cheques.

“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

See Bankruptcy Act, 1914, sect. 16 (17) and sect. 19. As to Scotland, see 3 & 4 Geo. 5, c. 20.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

The possessor of a bill or note payable to order is not technically the “bearer” of it.

“Bill” means bill of exchange, and “note” means promissory note.

See the substantial definitions given by sects. 3 and 83. As to cheques, see sect. 73.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

As to delivery, see sect. 21.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

See sect. 38 as to rights of the holder, sect. 27 (2) and (3) as to “holder for value,” sect. 29 as to “holder in due course,” and sect. 31 as to negotiation.

“Indorsement” means an indorsement completed by delivery.

See sect. 21 as to “delivery,” and sect. 32 as to the requisites of a valid indorsement.

“Issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

“ Person ” includes a body of persons whether incorporated or not.

“ Value ” means valuable consideration.

See sect. 27 as to valuable consideration.

“ Written ” includes printed, and “ writing ” includes print.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

3. (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer. Bill of exchange defined.

The person who gives the order is called the “ drawer,” the person thereby ordered to pay is called the “ drawee ” ; and the person to whom or to whose order the money is payable is called the “ payee.”

Sect. 97 saves the Stamp Acts. It is to be noted that many orders for the payment of money require to be stamped as bills of exchange, though they are not bills within the meaning of this Act, see *post* p. 74.

As to instruments payable on a contingency, see further sect. 11. As to a conditional indorsement, see sect. 33. As to a conditional acceptance, sect. 19. As to signature, see sect. 91. As to money, see the Coinage Act, 1870, and as to bills expressed to be payable in a foreign currency, see sect. 72 (4).

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

An instrument running “ Pay C. D. £100, and deliver to him 100 “ tons of coal,” would not be a bill. Compare sect. 17 (2).

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section ; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the

drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

(*a*.) That it is not dated ;

(*b*.) That it does not specify the value given, or that any value has been given therefor ;

(*c*.) That it does not specify the place where it is drawn or the place where it is payable.

As to filling in the date in the case of an undated bill or acceptance, see sect. 12. It is, of course, irregular not to date a bill. As to inchoate instruments, see sect. 20.

Inland and
foreign bills.

4. (1.) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

This provision does not affect the Stamp Acts, which are saved by sect. 97 (3). See the provisions of the Stamp Acts as to foreign bills and what are foreign bills for stamp purposes, post pp. 75, 76. By sect. 51 it is unnecessary to protest a bill which does not shew on the face of it that it is a foreign bill. Subsect. (2) is new law. But if an inland bill bears a foreign indorsement it may be necessary to protest it to charge the foreign indorser in his own country.

Effect where
different parties
to bill are the
same person.

5. (1.) A bill may be drawn payable to, or to the order of, the drawer ; or it may be drawn payable to, or to the order of, the drawee.

A bill is sometimes drawn in the form "pay to your own order," when the drawee acts in two different capacities.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

See the definition of "person" in sect. 2. As an illustration, suppose a firm has two houses, one in London, the other in Liverpool. If the London house draws on the Liverpool house, and the bill is dishonoured, the holder need not give notice of dishonour.

6. (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty. Address to drawee.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

As to indicating a "case of need," see sect. 15.

7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. Certainty required as to payee.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

This section alters the law in so far as it allows a bill to be made payable to one of two persons in the alternative, or to the holder of an office for the time being. Previously a bill payable to "the treasurer for the time being" of a society would have been invalid.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

This subsection somewhat extends the previous rule. The fraudulent insertion of the name of a real person, if the bill is not intended to be payable to him, may constitute a fictitious payee.—Bank of England v. Vagliano (1891). A.C. 107. See sect. 34 (3) as to indorsements.

What bills are negotiable.

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

This subsection read with subsection (4) adopts the Scotch rule, and a bill made payable to John Smith is now in legal effect payable to John Smith or order. If it be desired to make a bill not transferable, it should be drawn in the form "pay John Smith only."

As to when a bill, negotiable in its origin, ceases to be negotiable see sect. 36, and see also sect. 34 (3).

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

This subsection was intended to bring the law into accordance with custom by making a special indorsement control a previous indorsement in blank. See, too, sect. 34.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable

9. (1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a.) With interest.

(b.) By stated instalments.

(c.) By stated instalments, with a provision that Sum payable upon default in payment of any instalment the whole shall become due.

(d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

Bills are often drawn payable "at the exchange as per last indorsement."

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Interest proper payable by this instrument must be distinguished from interest as damages payable on its dishonour. As to the latter, see sect. 57. The fact that a bill is payable with interest does not affect the stamp.

10. (1.) A bill is payable on demand—

Bill payable on demand.

(a.) Which is expressed to be payable on demand, or at sight, or on presentation; or

(b.) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

See sect. 14, sect. 36 (3), sect. 45 (2), sect. 60 and sect. 73. For stamp purposes the definition is wider. See sect. 32 of the Stamp Act, 1891, and sect. 10 of the Finance Act, 1899, in Appendix.

11. A bill is payable at a determinable future time Bill payable at a future time. within the meaning of this Act which is expressed to be payable—

(1.) At a fixed period after date or sight.

See sect. 14 (2) (3), sect. 18 (3), and sect. 65 (5), as to fixing the due date.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen,

though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

An instrument running "Pay C or order £100 on the arrival of the "ship Sarah in London" would not be a bill.

Omission of date in bill payable after date or sight.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

The law on the subject dealt with by this section was previously very doubtful. See sect. 20 for the general rule as to omissions in a bill.

Ante-dating and post-dating.

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

It has been held under the Stamp Act, 1870 (and the Act of 1891 in similar terms), that a post-dated cheque is not invalid. Apart from the Stamp Acts it is for most purposes a bill payable after date. To ante-date a bill in order to defraud may amount to a forgery.

Computation of time of payment.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows :—

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace : Provided that—

Computation of
time of payment.

(a.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day ;

(b.) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

Christmas Day and Good Friday were Bank Holidays in Scotland, not common law holidays : but in this respect Scotch law has now been assimilated to the English, and henceforth in Scotland, as in England, a bill falling due on Christmas Day or Good Friday will be payable on the preceding business day. The Acts extending the Bank Holidays Act, 1871, are the Holidays Extension Act, 1875 (38 & 39 Vict., c. 13), and the Bank Holiday (Ireland) Act, 1903 (3 Edw. 7, c. 1). St. Patrick's Day is a Bank Holiday in Ireland. As to the term "business day," see sect. 92. As to what bills are in effect payable on demand, see sect. 10.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and

from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

See sect. 65 (5), as to the maturity of a bill payable after sight which is accepted for honour, and see also sect. 18 (3).

(4.) The term "month" in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

A bill must be noted before it can be presented to the referee in case of need, see sects. 65, 67, 68. It may perhaps still be necessary to resort to the case of need to charge a foreign drawer in his own country.

Optional stipulations by drawee or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1.) Negating or limiting his own liability to the holder.

(2.) Waiving as regards himself some or all of the holder's duties.

Bills are sometimes indorsed "sans recours" or "without recourse," or "sans frais." See further sect. 31 (5) as to executors, etc.

Definition and requisites of acceptance.

17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

See sects. 2 and 21 as to delivery or notification to complete an acceptance. See sect. 91 as to signature.

(2.) An acceptance is invalid unless it complies with the following conditions, namely :

(a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

- (b.) It must not express that the drawee will perform his promise by any other means than the payment of money.

18. A bill may be accepted—

- (1.) Before it has been signed by the drawer, or Time for acceptance. while otherwise incomplete :

See sect. 20.

- (2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept or by non-payment :

See sect. 39 (4).

- (3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

This rule was intended to secure, that apart from special agreement, the holder should be put in the same position as if the bill had not been dishonoured.

19. (1.) An acceptance is either (a) general or General and qualified acceptances. (b) qualified.

As to the effect of taking a qualified acceptance and the holder's option to refuse it, see sect. 44, and see also sect. 52 (2).

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

- (a.) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated :

An acceptance "payable on delivery of bills of lading" would be conditional.

- (b.) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

See further proviso to sect. 44 (2).

(c.) local, that is to say, an acceptance to pay only at a particular specified place :

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere :

This section reproduces the provisions of the 1 & 2 Geo. 4, c. 78. An acceptance "payable at the Ayre Bank," would be a general acceptance ; while an acceptance "payable at the Ayre Bank only," would be qualified, see further sects. 44 and 52 (2).

(d.) qualified as to time :

(e.) the acceptance of some one or more of the drawees, but not of all.

An acceptance will, where possible, be construed as general, and not as qualified, *Meyer v. Decroix* (1891), A. C. 520.

Inchoate
instruments.

20. (1.) Where a simple signature, on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up

within a reasonable time and strictly in accordance with the authority given.

See "holder in due course," defined by sect. 29, and see sect. 12 as to filling in the date when omitted.

21. (1.) Every contract on a bill, whether it be the Delivery.
drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a.) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be :

(b.) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

See "holder in due course," defined by sect. 29, and "delivery," defined by sect. 2.

If there be authority to send a bill by post, the post is considered as the agent of the person to whom the bill is sent.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or

indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties.

Capacity of parties.

22. (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

A corporation is not liable on its acceptance unless it is a trading corporation, or unless it is expressly or impliedly authorised by its act of incorporation to make or accept bills: for instance, an ordinary railway company could not be sued on its acceptance.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such. Provided that—

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

The rule of general law as to the liability of an undisclosed principal does not apply to bills. See as to signature by the hand of an agent, sect. 91.

A partner in a trading firm is *primâ facie* entitled to bind his co-partners by drawing, indorsing, or accepting in the firm's name, and the presumption is absolute in favour of a holder in due course; but in the

case of a non-trading firm it lies on the person seeking to enforce the bill to shew that the partner who drew, indorsed, or accepted it, had authority to bind his co-partners.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Forged or
unauthorised
signature.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

For the provisions referred to, see sect. 54 (2), sect. 55, sect. 60, sect. 80, sect. 82. See sect. 72 (2) as to conflict of laws. In many continental countries a good title can be made through a forged indorsement if the bill is in the hands of a *bonâ fide* holder.

It has been held that if the holder of a bill knowing the acceptance to be forged gets the acceptor to ratify it, the ratification fails as being contrary to public policy; but if a person whose signature has been forged so conducts himself as to induce the holder to take it to be genuine, he is not afterwards allowed to set up the forgery. As to forged indorsements on a cheque, see sects. 60 and 82. If a banker pays an acceptance held under a forged indorsement, he cannot debit his customer with the amount so paid, unless the case comes within sect. 7 (3).

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Procuration
signatures.

26. (1.) Where a person signs a bill as a drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally

Person signing
as agent or in
representative
capacity.

liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Sect. 97 expressly saves the operation of the Companies' Acts. When, then, a bill or note is signed by the agent or manager of a limited company, the question whether the company is bound by it depends on the provisions of sect. 77 of the Companies' Act, 1908, see *post* p. 65.

An agent who signs for his principal, whether his principal be a company, firm, or private individual, should either sign by a procuration signature, or prefix words to his signature specifying that he signs *for* or *on behalf of* his principal, thus—

“For the — Company,”

“C. D., Secretary.”

If an agent signs for his principal, without authority to do so, he is not liable as a party to the bill, but he is liable in an action for damages for breach of his implied warranty that he had authority.

The Consideration for a Bill.

Value and holder
for value.

27. (1.) Valuable consideration for a bill may be constituted by,—

- (a.) Any consideration sufficient to support a simple contract;
- (b.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

As an illustration, suppose a holder for value indorses a bill to an

agent for collection, the agent can sue the acceptor, but could not sue his own principal—see too sect. 29 (3).

(3.) Where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Subject to any special agreement, a banker has a lien for advances on all securities of his customers which come into his hands in the ordinary course of his business as a banker.

28. (1.) An accommodation party to a bill is a Accommodation bill or party. person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

As to when notice of dishonour may be excused in the case of an accommodation bill, see sect. 50 (2), (c) and (d). As to payment of an accommodation bill by the person accommodated, see sect. 58 (3).

When a person accepts a bill for the accommodation of another, the person accommodated is held, in the absence of any express agreement, to engage that he will provide funds for the payment of the bill at maturity, and that if, owing to his omission to do so, the accommodation acceptor is compelled to pay the bill he will indemnify him.

29. (1.) A holder in due course is a holder who Holder in due course. has taken a bill, complete and regular on the face of it, under the following conditions; namely,

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(b.) That he took the bill in good faith and for value, and that at the time the bill was

negotiated to him he had no notice of any defect in the title of the person who negotiated it.

The expression "holder in due course," has been used in the Act as being less cumbrous than the technical legal phrase "*bonâ fide* holder for value without notice." As to "good faith," see sect. 90. As to the effect of taking a bill which is overdue, or which is known to have been dishonoured by non-acceptance, see sect. 36. As to the rights of a holder in due course, see sect. 38. See "holder" defined by sect. 2.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

The expression "force and fear" is the Scotch equivalent of the English term "duress." A person who is in possession of a bill under a forged indorsement is not the "holder." It is a case of no title, not of a defective title. See sect. 24.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

See sect. 27 (2).

Presumption of
value and good
faith.

30. (1.) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted, or proved that the acceptance, issue, or subsequent negotiation of the bill is affected

with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

The fact that full money value had been given would be almost conclusive of good faith, but some further evidence of good faith should be given. "Force and fear" is the Scottish equivalent of "duress."

Negotiation of Bills.

31. (1.) A bill is negotiated when it is transferred Negotiation of bill. from one person to another in such a manner as to constitute the transferee the holder of the bill.

See "holder" and "issue" defined by sect. 2.

(2.) A bill payable to bearer is negotiated by delivery.

See sect. 8 (3) as to indorsements in blank, and sect. 2 defining "delivery."

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

See sect. 8 and sect. 36 as to bills to order, and sect. 21 as to delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

Until the indorsement is obtained the transfer appears to operate as what is technically known in England as an "equitable assignment."

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

See sect. 16 as to indorsing without recourse, and see sect. 26 as to representatives.

Requisites of a
valid indorse-
ment.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely :—

- (1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognised, is deemed to be written on the bill itself.

Where there is not room on a bill for all the indorsements, a slip of paper called an “allonge” is attached to the bill. To avoid the possibility of frauds, the first indorsement on the allonge is usually begun on the bill and completed on the allonge. As to “copies,” which are distinct from the parts of a set, see for instance arts. 70-72 of the German General Exchange Law.

- (2.) It must be an indorsement of the entire bill.

A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

- (3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

But see sect. 97 (d) as to dividend warrants.

- (4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

As a rule, the payee only signs as described in the bill, without adding his proper signature. A question sometimes arises as to how a bill should be indorsed which is payable to the order of (say) "Mrs. John Jones." It is thought the proper form in such case would be for her to sign "Ellen Jones, wife of John Jones."

(5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not. Conditional indorsement.

As between indorser and indorsee the condition presumably would be operative; and if the indorsee received payment without the condition being fulfilled, he would hold the money in trust for the indorser. The following indorsement would be conditional:—"Pay C, or order, on the arrival of the ship *Swallow* at *Calcutta*." "Pay C, or order, if he marries D." See sect. 35 as to restrictive indorsement.

34. (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer. Indorsement in blank and special indorsement.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

See sects. 7 and 8.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's

signature a direction to pay the bill to or to the order of himself or some other person.

As to the effect of a special indorsement following an indorsement in blank, see sect. 8.

Restrictive
indorsement.

35. (1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D only," or "Pay D for the account of "X," or "Pay D, or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of
overdue or dis-
honoured bill.

36. (1.) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

See sects. 59-64 as to discharges, and sect. 35 (2) as to restrictive indorsements.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

As to "defects of title" see sect. 29 (2). The expression is used

in the Act instead of the English technical legal term "equity attaching to the bill," which is unknown in Scotch law.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

See sect. 10 defining what bills are payable on demand.

By virtue of sect. 73 this subsection applies to cheques. A person who takes a stale cheque, takes it at his peril. If it be all right he can enforce it against the drawer; but if it be affected by fraud or illegality, he cannot recover on it.

This subsection does not apply to notes, see sect. 86 (3).

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

See sect. 29 defining "holder in due course," and sect. 43 as to dishonour by non-acceptance.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Negotiation of bill to party already liable thereon.

The provisions referred to are sect. 59 (3) and sect. 61. Suppose A indorses a bill for value to B. B negotiates the bill, and eventually it is indorsed back to A. Then A cannot sue B; for B in turn could sue A as a prior indorser.

Rights of the holder acquired by negotiation.

38. The rights and powers of the holder of a bill are as follows :

- (1.) He may sue on the bill in his own name :
- (2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :

A set-off or counter-claim would be a personal defence.

- (3.) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

See sect. 2 defining holder, sect. 29 defining holder in due course, and sect. 59 defining payment in due course.

General duties of the Holder.

When the drawer or indorser of a bill is discharged from his liability on the bill by reason of the holder's omission to present it or give notice of dishonour, the rule is that he is also discharged from any liability as regards the debt or consideration in respect of which the bill was given.

When presentment for acceptance is necessary

39. (1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

If an agent wrongfully omitted to present a bill, he would be liable to his principal for any loss resulting from the omission. Bills are sometimes drawn in the form "Pay without acceptance."

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

This subsection settles a doubtful point. Suppose a bill, payable one month after date, is drawn in New York on Liverpool, payable in London. It only reaches the English holder in London on the day it matures. He must, nevertheless, present it for acceptance to the drawee in Liverpool. Formerly the usual practice was to protest the bill in London without any presentment to the drawee.

40. (1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

Time for presenting bill payable after sight.

For the provisions referred to see sect. 41 (2).

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41. (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules :

(a.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse

Rules as to presentment for acceptance, and excuses for non-presentment.

Rules as to
presentment for
acceptance.

acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue.

Putting a bill in the bill-box, or giving a bill to a clerk in the office in the usual way, is, of course, a presentment to the drawee. But if the drawee is not a trader, presenting the bill to the servant who opened the door would not be sufficient. Reasonable diligence must be used to find the drawee, or some person authorised to act for him.

(*b.*) When a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only.

(*c.*) Where the drawee is dead, presentment may be made to his personal representative.

(*d.*) Where the drawee is bankrupt, presentment may be made to him or to his trustee.

See "bankrupt" defined by sect. 2.

(*e.*) Where authorized by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a.*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill :

In the first official issue of the Act the words "or bankrupt" had slipped out. The omission has been rectified in subsequent issues. See "bankrupt" defined by sect. 2.

(*b.*) Where, after the exercise of reasonable diligence, such presentment cannot be effected :

(*c.*) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3.) The fact that the holder has reason to believe

that the bill, on presentment, will be dishonoured does not excuse presentment.

42. (1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured, by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers. Non-acceptance.

The customary time is usually stated to be 24 hours. The probable effect of the section is this. If a bill left for acceptance within business hours one day is not accepted before the close of business hours on the next day it must be noted for non-acceptance, or otherwise treated as dishonoured. As to protesting a bill for non-delivery, see sect. 51 (8).

43. (1.) A bill is dishonoured by non-acceptance— Dishonour by non-acceptance and its consequences.

(a.) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or

(b.) When presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

For the provisions referred to see sect. 65 as to acceptance for honour.

44. (1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance. Duties as to qualified acceptances.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer

or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

See sect. 19 (2), as to what is a qualified acceptance. The most important instance is the case of a bill accepted payable against delivery of bills of lading. In some trades the practice of taking such acceptances is so common that it might perhaps be held that there was implied authority to the holder to take such an acceptance. Sometimes, too, the terms of a documentary bill are such as impliedly to authorise it.

When the holder takes a partial acceptance he should give notice of the qualification, not notice of dishonour. See, further, sect. 52 (2).

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to
presentment for
payment.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

For the provisions referred to see sect. 46.

A bill is duly presented for payment which is presented in accordance with the following rules:—

- (1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.

As to calculating the due date in such case, see sect. 14.

- (2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time

after its indorsement, in order to render the indorser liable.

Rules as to
presentment for
payment.

As to what bills are payable on demand, see sect. 10; as to cheques, see sect. 74.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4.) A bill is presented at the proper place :—

(a.) Where a place of payment is specified in the bill and the bill is there presented :

(b.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented :

(c.) Where no place of payment is specified and no address given and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known :

(d.) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence :

- (5.) Where a bill is presented at the proper place and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

Of course, if one pays, or, in refusing payment, acts as the agent of the others, that is enough.

- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

Compare sect. 41 (2). The rules as to presentment for payment differ somewhat from those as to presentment for acceptance, because of the different nature of the act to be performed by the drawee or his agent. In the one case he has to hand over a sum of money ; in the other, he has to sign a contract to be performed at a future day. Neither the death nor the bankruptcy of the payer excuse presentment for payment.

- (8.) Where authorised by agreement or usage, a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.
[*Cf.* 4 & 5 Geo. 5, c. 82, s. 1.]

46. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

- (2.) Presentment for payment is dispensed with,—
(a.) Where, after the exercise of reasonable

diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity of presentment.

(*b.*) Where the drawee is a fictitious person.

(*c.*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d.*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e.*) By waiver of presentment, express or implied.

The waiver may be before or after the omission to present. If the drawer or indorser promises to pay the bill after he knows that it has not been duly presented, he would be held to have waived presentment.

As to delay in presentment due to war, see sect. 1 of the Bills of Exchange Act, 1914, *post* p. 84.

47. (1.) A bill is dishonoured by non-payment (*a*) Dishonour by non-payment. when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

For the provisions referred to, see sects. 65-68, as to acceptance and payment for honour.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by Notice of dishonour and effect of non-notice.

non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged ; Provided that—

(1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

See “holder in due course” defined by sect. 29. For the provisions referred to, see sect. 50. If the holder gives notice to his immediate indorser, and he in turn gives notice to the party from whom he received the bill, and so on, this is sufficient, and the holder can take advantage of the notices so given, see sect. 49 (4) and (8).

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to
notice of
dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

See note to subsections (3) and (8).

(2.) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder it enures for the benefit of subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

Suppose a bill drawn by A is indorsed by C. If the holder gives notice to the drawer as well as C, then C can take advantage of that notice. If, on the other hand, the holder gives notice to C only, and C gives notice to the drawer, then both the holder and C can take advantage of that notice; but if C did not send on notice the holder could sue C, but no one could sue the drawer.

Rules
as to notice
of dishonour

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder, and all indorsers subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

The object of the section appears to be to negative, as far as possible, the technicalities which had grown up around notices of dishonour. The following forms are suggested as complying with the terms of the Act.

NOTICE OF DISHONOUR TO DRAWER.

[*Date and Address.*]

Please take notice that a bill for £ drawn by you under date the
on and payable has been dishonoured
by non-payment [*or non-acceptance*]. (Signed) C. D.
To Mr. A. B.

NOTICE OF DISHONOUR TO INDORSER.

[*Date and Address.*]

Please take notice that a bill for £ drawn by under
date the on and payable and which
bears your indorsement has been dishonoured by non-acceptance [*or non-payment*]. (Signed) C. D.
To Messrs. A. B. & Co.

(6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

This subsection recognizes a common practice of collecting bankers which before was of doubtful validity. See too subsections (8) and (13).

Rules as to
notice of
dishonour.

- (7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
- (10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

- (a.) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

- (b.) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

Rules as to
notice of
dishonour.

- (13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

See, too, subsection (8).

- (14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

- (15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

50. (1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

Excuses for
non-notice and
delay.

As to delay in the post, see sect. 49 (15).

- (2.) Notice of dishonour is dispensed with—

- (a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged :

(b.) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :

(c.) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment :

(d.) As regards the indorser in the following cases, namely—(1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

Compare this section with sect. 46, as to excuses for non-presentment, or delay in presentment. See "person" defined by sect. 2.

Noting or
protest of bill.

51. (1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be ; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

If an inland bill be noted the expenses of noting can be recovered, see sect. 57 (1) ; but it is optional with the holder to note the bill or not. The act attaches no legal consequence to noting an inland bill, except by making it a necessary preliminary to acceptance or payment for honour, see sects. 65 and 67. See "inland bill" defined by sect. 4. For the purpose of summary diligence in Scotland an inland bill must

be protested as heretofore, see sect. 98; and if an inland bill be indorsed abroad it may be necessary to protest it to charge the foreign indorser.

A cheque is a "bill of exchange," see sect. 73. For the application of this section to promissory notes, see sect. 89.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Protest in such case may be necessary in order to charge a foreign drawer or indorser in his own country. The necessity would depend on the law of the country in question. An English Act can only lay down the law for the United Kingdom.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, [it may be noted on the day of its dishonour, and it must be noted not later than the next succeeding business day]. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [Cf. 7 & 8 Geo. 5
c. 48.]

The words in square brackets were substituted for the words "it must be noted on the day of its dishonour" by the Bills of Exchange (Time of Noting) Act, 1917, *post* p. 85. See further sect. 93, as to subsequently extending the protest and subsection (9).

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures the holder may cause the bill to be protested for better security against the drawer and indorsers.

The only consequence of such a protest in the United Kingdom seems to be that the bill may then be accepted for honour, see sect. 65.

Under some of the foreign codes the drawer and indorsers are in such cases compelled to give security to the holder.

(6.) A bill must be protested at the place where it is dishonoured :

Provided that—

(a.) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day :

This subsection recognises the custom of the Liverpool notaries as to bills drawn on the cotton spinners in Lancashire.

(b.) When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested.

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

See sect. 94, as to protest where the services of a notary are not available. The Act does not require a protest to be under seal. As to the stamp, see *post* p. 81.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

As to lost bills, see further sects. 69, 70.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52. (1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

Duties of holder as regards drawee or acceptor.

The theory of English law is that the debtor should seek out his creditor. The practical effect of this rule is that the acceptor cannot take advantage of any irregularity in the presentment. If the holder were to commence an action without having first presented the bill, the Court, presumably, would make him pay the costs.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

See sects. 19 and 44, as to qualified acceptances.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

Protest is still necessary for the purposes of summary diligence in Scotland, see sect. 98. As to conflict of laws, see sect. 72.

(4.) Where the holder of a bill presents it for

payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

Fund in hands of drawee.

53. (1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This subsection shall not extend to Scotland.

(2.) In Scotland where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it :

(1.) Engages that he will pay it according to the tenour of his acceptance :

See sect. 19, as to general and qualified acceptances. As between the parties liable on a bill, the drawee who accepts for value thereby becomes the principal debtor, and the drawer and indorsers become, as regards him, sureties.

(2.) Is precluded from denying to a holder in due course—

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill :

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement :

- (c.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

As to fictitious payees, see sect. 7 (3).

55. (1.) The drawer of a bill by drawing it—

Liability of
drawer or
indorser.

- (a.) Engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
- (b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

- (a.) Engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
- (b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;
- (c.) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

56. Where a person signs a bill otherwise than as

Stranger signing
bill liable as
indorser.

drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

If a person who is not the holder of a bill, backs it with his signature, he does not strictly speaking indorse it, but the Act provides that he shall incur the same liabilities as an indorser, as to which see sect. 55 (2). Such an indorsement or guarantee is known on the continent as an "aval."

Measure of
damages against
parties to dis-
honoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :

- (1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
 - (a.) The amount of the bill :
 - (b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case :
 - (c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
- (2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

The re-exchange is the measure of the loss resulting from the

dishonour of a bill in a country different to that in which it was drawn or indorsed. The sum recoverable against a drawer or indorser in the United Kingdom is the sum for which a sight bill, drawn at the time and place of dishonour on the place where the drawer or indorser resides, must be drawn in order to realize, at the place of dishonour, the amount of the dishonoured bill and the expenses consequent on its dishonour. The expenses consequent on dishonour mean the expenses of protest, postage, customary commission and brokerage, and if a re-draft be drawn, the price of the stamp. Subsect. (1) is not exhaustive. If a foreign bill is dishonoured in England, and the foreign drawer is liable for re-exchange, he may recover it from the acceptor.

- (3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

As to interest proper, see sect. 9 (3).

58. (1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."
Transferor by delivery and transferee.

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

See "holder" and "delivery" and "bearer," defined by sect. 2; bill "payable to bearer," defined by sect. 8.

Discharge of Bill.

59. (1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.
Payment in due course.

“Payment in due course” means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

A person who makes title to a bill through a forged indorsement is not the holder, see sects. 2, 24 and 38. As to “good faith,” see sect. 90.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged ; but

(a.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b.) Where a bill is paid by an indorser, or where a bill payable to drawer’s order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

If a bill is accepted for the accommodation of the drawer, or an indorser, and he pays it, it is discharged, because he is the person ultimately liable in respect of the bill. See sect. 28 as to accommodation bills and parties.

Banker paying
demand draft
where an indorse-
ment is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the

authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

This section reproduces in substance the 16 and 17 Vic. c. 59, s. 19, but that enactment has not been repealed, as it applies to some "drafts or orders" which are not bills or cheques. As to forgery in other cases, see sect. 24.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. Acceptor the holder at maturity.

It was formerly held at common law, that where the acceptor of a bill became the holder of it as executor of the late holder the bill was discharged. This section apparently negatives that rule.

62. (1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. Express waiver.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

The provision requiring the renunciation to be in writing is new in England, and appears to be taken from the Scotch law.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

63. (1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. Cancellation.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his

signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative ; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Alteration of bill.

64. (1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is discharged except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenour.

The proviso is new and mitigates the rigour of the previous law.

Sect. 97 saves the operation of the Stamp Acts. Where, then, an alteration is such as to make the instrument a new bill requiring a fresh stamp, the bill may be void under the Stamp Acts, though otherwise enforceable under this section.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally the

addition of a place of payment without the acceptor's assent.

The alteration of the number on a bank note, and the addition of a maker to a joint and several note, have been held to be material alterations.

Acceptance and Payment for Honour.

65. (1.) Where a bill of exchange has been pro-
tested for dishonour by non-acceptance, or protested Acceptance for
honour *suprà*
protest.
for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

By virtue of sect. 93, it is sufficient that the bill has been noted, without the protest having been actually extended.

The person for whose account the bill is drawn is commonly spoken of as the "third account."

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour *suprà* protest in order to be valid must—

(a.) be written on the bill, and indicate that it is an acceptance for honour :

(b.) be signed by the acceptor for honour.

Compare sect. 68 (3), (4). The clause in the bill requiring acceptance for honour to be attested by a notarial act was cut out in committee. As to signature, see sect. 91.

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honour.

This subsection affirms the existing practice, and gets rid of an inconvenient decision that the maturity should be calculated from the date of acceptance for honour.

Liability of
acceptor for
honour.

66. (1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenour of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

The rights of an acceptor for honour who pays are those of an ordinary payer for honour.

Presentment to
acceptor for
honour or case of
need.

67. (1.) Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

By virtue of sect. 93, it is sufficient that the bill has been noted without the protest having been extended.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

See sect. 46 as to these circumstances.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

68. (1.) Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. Payment for honour *suprà* protest.

By virtue of sect. 93, it is sufficient that the bill has been noted, without the protest having been extended.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour *suprà* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not

on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's right
to duplicate of
lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenour, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost
bill.

[*Cf.* 4 & 5 Geo. 5,
c. 82, s. 2.]

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

As to protest of a lost bill, see sect. 51 (8). At common law if a bill was lost, no action could be maintained either on the bill or on the consideration for it. As to other negotiable instruments, see 17 & 18 Vict. c. 125, sect. 87.

As to bills lost owing to the war, see sect. 2 of the Bills of Exchange Act, 1914, *post* p. 84.

Bill in a Set.

Rules as to sets.

71. (1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

As to stamping a bill in a set, see *post* p. 78.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such

part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

See sect. 29, defining holder in due course.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

See sects. 59-64 as to discharges.

Conflict of Laws.

This section gives full effect to the maxim *locus regit actum* in so far as it validates transactions, which might otherwise be invalid. In so far as its operation is disabling, it is limited by the provisos to subsections (1) and (2).

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows—

Rules where laws conflict.

Rules where
laws conflict.

- (1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity, as regards requisites in form, of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà* protest, is determined by the law of the place where such contract was made.

Provided that—

- (a.) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :
- (b.) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

See definitions of "issue" "acceptance" and "indorsement" in sect. 2.

- (2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

The provisions referred to must be apparently the remaining provisions of the section, and sects. 15, 53 (?) and 57.

A bill of exchange is a chattel, and therefore, when it is transferred abroad, the validity of the transfer must be determined by the law of

the country where it is transferred, even in the case where the indorsement has been forged. See *Embiricos v. Anglo-Austrian Bank* (1905), 1 K.B. 677, C.A. Rules where laws conflict.

(3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4.) Where a bill is drawn out of, but payable in, the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

If a bill is drawn in New York on London, and the amount is expressed in dollars, the sum in English money which the holder is entitled to receive will be ascertained according to this rule. See a different rule for stamp purposes, *post* pp. 71, 72.

(5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

The French code does not allow days of grace ; under this section a bill, payable after date or sight, drawn in Paris on London is entitled to three days of grace, while a bill drawn in London on Paris is not entitled to any days of grace.

PART III.

CHEQUES ON A BANKER.

73. A cheque is a bill of exchange drawn on a Cheque defined.
banker payable on demand.

Cheque.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

The provisions which specially relate to bills payable on demand are :—Sect. 10, which defines what bills are in legal effect payable on demand ; sect. 36 (3), which specifies the conditions under which a person who takes a stale cheque takes it at his peril ; sect. 45 (2), in so far as it relates to presentment to charge an indorser, but not in so far as it relates to the drawer ; sect. 60, which provides that the banker is not responsible if he pays a cheque held under a forged or unauthorised indorsement.

Inasmuch as a cheque is a bill of exchange, it follows that, if dishonoured on presentment, notice of dishonour must be given to the drawer (and indorser, if any), unless the case comes within one of the exceptions specified in sect. 50 (2).

The term cheque was formerly used only in relation to inland drafts, but it now clearly includes demand drafts drawn abroad on a banker here.

The following sections are of special importance in relation to cheques, namely :—Sect. 9 (2), discrepancy between words and figures as to amount payable ; sect. 24, forgery of drawer's signature ; sect. 27 (3), banker's lien on cheques which he collects ; sect. 45, mode of presentment ; sect. 53, cheque not an assignment of funds, except in Scotland ; sect. 59, payment ; sect. 60, forged indorsement ; sect. 63, cancellation. As to stamp, see sect. 36 of Finance Act, 1918, *post*, p. 85.

Presentment of
cheque for pay-
ment.

74. Subject to the provisions of this Act—

The provisions referred to, presumably, are those of sect. 46, which deals with excuses for non-presentment.

- (1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right at the time of such presentment, as between him and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger

amount than he would have been had such cheque been paid.

- (2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor in lieu of such drawer or person of such banker to the extent of such discharge, and entitled to recover the amount from him.

This section is new law. It was introduced in the Lords to mitigate the rigour of the common law rule, according to which, if the bank failed before the cheque was presented, the drawer was discharged, even though the bank eventually paid nineteen shillings in the pound. The new rule operates as follows :—

A draws a cheque for £100 on his banker, which is not presented within a reasonable time. The banker fails, A having at the time sufficient money to his credit to meet the cheque. A is discharged ; but the holder can prove for £100 against the banker's estate.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

Revocation of
banker's
authority.

- (1.) Countermand of payment :
- (2.) Notice of a customer's death.

The authority of a banker to pay a cheque is also determined by notice that the customer has committed an act of bankruptcy—notice in this case meaning knowledge, or by the fact that a receiving order has been made, see sect. 97, saving the effect of the bankruptcy laws. After a banker has been served with a garnishee order he pays at his own risk.

Notice of the customer's lunacy would, it seems, revoke the banker's authority to honour his cheques. See *Drew v. Nunn* (1879), 4 Q.B.D. 661, C.A.

Apart from special agreement, the relation of banker and customer is held to be that of debtor and creditor ; the customer being the creditor, and having, in addition to the ordinary rights of a creditor, the right to draw cheques on his banker to the extent of the balance at his

credit and disposal. If the banker, having sufficient funds in hand, dishonours his customer's cheque, he is liable to him in action for damages. When a bank has several branches, a customer having an account at one branch is not, in the absence of special agreement, entitled to draw on another branch.

Crossed Cheques.

General and
special crossings
defined.

76. (1.) Where a cheque bears across its face an addition of—

(a.) The words “and company” or any abbreviation thereof between two parallel transverse lines, either with or without the words “not negotiable”; or,

(b.) Two parallel transverse lines simply, either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Sects. 76 to 82 reproduce, with two slight additions, the provisions of the Crossed Cheques Act, 1876 (39 & 40 Vict. c. 81). By sect. 17 of the Revenue Act, 1883, these sections are extended to any document issued by a customer of any banker, and intended to enable any person to obtain payment from such banker of the sum mentioned in such document. As to Clearing House Rules, see p. 86.

Where a crossed cheque is marked “account payee,” it is a direction to the collecting banker to pass the amount to the credit of the payee's account.

Crossing by
drawer or after
issue.

77. (1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Subsections (1) and (6) are new.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Crossing a material part of cheque.

As to the effect of a material alteration, see sect. 64.

79. (1.) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

Duties of banker as to crossed cheques.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker

paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to
banker and
drawer where
cheque is crossed.

80. Where the banker, on whom a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing
on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Suppose a cheque to bearer crossed "not negotiable" is stolen. The thief gets it cashed by B, a tradesman, who acts in complete good faith in so doing. B gets no better title than the thief. He cannot retain the cheque as against the true owner, and if payment of it is stopped he cannot sue the drawer.

Protection to
collecting
banker.
[Cf. 6 Edw. 7,
c. 17.]

82. Where a banker in good faith and without negligence receives payment *for a customer* of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto,

the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

This section reproduces the second clause of sect. 12 of the Crossed Cheques Act, 1876, as interpreted by the case of *Mathiesson v. London and County Bank*, 5 C.P.D. 7. As to what is a cheque "crossed" "generally or specially," see sect. 76. *Primâ facie* only persons having an account at a bank are "customers" within this section.

By sect. 1 of the Bills of Exchange (Crossed Cheques) Act, 1906 (*post*, p. 85), a banker receives payment of a crossed cheque *for a customer* within the meaning of this section, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

PART IV.

PROMISSORY NOTES.

83. (1.) A promissory note is an unconditional Promissory note defined. promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

See further sects. 3 and 11 and notes thereto. For a wider definition for stamp purposes, see sect. 33 of the Stamp Act, 1891, *post*, p. 75.

(2.) An instrument in the form of a note payable to maker's order, is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4.) A note which is or on the face of it purports to be both made and payable within the British Islands is an inland note. Any other note is a foreign note.

See further sect. 4, as to inland and foreign bills, and sect. 89 (4).

Delivery
necessary.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

As to delivery, see sects. 2 and 21.

Joint and several
notes.

85. (1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour.

(2.) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

Note payable on
demand.

86. Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

As to when a note is in legal effect payable on demand, see sect. 10. In the case of a note payable on demand the Statute of Limitations runs in favour of the maker from the date of the note, and not from the date of its dishonour.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

This subsection negatives the application of sect. 36 (3) to notes.

Presentment of
note for payment.

87. (1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to

render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

See sect. 52 and note thereto.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

See sects. 45 and 46, as to presentment and notes thereto.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

88. The maker of a promissory note by making it— Liability of maker.

(1.) Engages that he will pay it according to its tenour;

(2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

See, further, sects. 52 and 57.

89. (1.) Subject to the provisions in this part, and Application of Part II. to notes. except as by this section provided, the provisions of this Act relating to bills of exchange, apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes ; namely, provisions relating to—

(a.) Presentment for acceptance ;

(b.) Acceptance ;

(c.) Acceptance *suprà* protest ;

(d.) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

For the purpose of charging a foreign maker or indorser in his own country protest may still be necessary.

PART V.

SUPPLEMENTARY.

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly ; whether it is done negligently or not.

Signature.

91. (1.) When, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

See sects. 23 to 26 *ante*.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. Computation of time.

“ Non-business days ” for the purposes of this Act mean (a) Sunday, Good Friday, Christmas Day.

(b.) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it.

(c.) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

See *e.g.*, sect. 49 (12); sect. 67 (2). The Bank Holiday Acts are 34 & 35 Vict. c. 17; 38 & 39 Vict. c. 13; and 3 Edw. 7, c. 1.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting. When noting equivalent to protest.

See especially sects. 65 to 68.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. Protest when notary not accessible.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

For form, see *post*, p. 67.

Dividend
warrants may be
crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

The Crossed Cheques Act, 1876, only applied in terms to the dividend warrants of the Bank of England and Bank of Ireland. The present section is general.

Repeal.

96. The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

See Schedule, *post*, p. 68.

Savings.

97. (1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

(a.) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue :

See the material provisions of the Stamp Act, 1891, and the Acts amending it, set out in the appendix. The Act of 1870 is repealed.

(b.) The provisions of the Companies Act, 1862, or

Acts amending it, or any Act relating to ^{Savings.}
joint stock banks or companies :

By sect. 77 of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), it is provided—

77. A bill of exchange or promissory note shall be deemed to have been made, accepted or indorsed on behalf of a company if made, accepted or indorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

And see “company,” defined by sect. 285 of that Act.

(c.) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively.

By virtue of the Bank Charter Acts (subject to certain exceptions as to old banks of issue) a banker in England may not make or accept any bill or note which purports to be, or in legal effect is, payable to bearer on demand.

(d.) The validity of any usage relating to dividend warrants, or the indorsement thereof.

When a dividend warrant was payable to the order of two or more persons, the usage was to pay on the indorsement of any one of them. If, and in so far as this usage is now in force it is preserved. See sect. 32 (3).

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence. ^{Saving of summary diligence in Scotland.}

As to summary diligence in Scotland, that is to say, the summary enforcement of a bill or note, see 12 Geo. 3, c. 72, sects. 37, 39–43, and 1 & 2 Vict. c. 114, sects. 1, 9.

A summary procedure in England was given by the Act of 1855, 18 & 19 Vict., c. 67; but the procedure under that Act has been abrogated as regards the High Court by Order II., 6a, of the Rules of the Supreme Court, and the summary procedure under Order XIV. of those Rules has been substituted. The Act of 1855 still applies to some of the inferior Courts in England; *e.g.*, the Mayor’s Court of London and the County Courts.

99. Where an Act or document refers to any enactment repealed by this Act, the Act or document shall ^{Construction with other Acts, &c.}

be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parole evidence
allowed in
certain judicial
proceedings in
Scotland.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence : Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

This section removes a technicality in the Scotch law of evidence which had often been adversely commented on by the judges.

SCHEDULES.

FIRST SCHEDULE.

Form of protest which may be used when the service of a Notary cannot be obtained.

Know all men that I, *A. B.* [householder], of in the county of , in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the day of 18 at demand payment [*or* acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said bill of exchange.

(Signed) *A. B.*

G. H. }
J. K. } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill, and all that is written thereon should be underwritten.

See sect. 94 as to this form.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and Extent of Repeal.
9 Will. 3. c. 17	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3. c. 30	An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3. c. 42 .	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3. c. 88	An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum in England.
1 & 2 Geo. 4. c. 78	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4. c. 15	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4. c. 24	An Act to repeal certain Acts, and to consolidate and amend the laws relating to Bills of Exchange and Promissory Notes in Ireland, in part; that is to say, Sections two; four, seven, eight, nine, ten, eleven.
2 & 3 Will. 4. c. 98	An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.

SCHEDULE.

Session and Chapter.	Title of Act and Extent of Repeal.
6 & 7 Will. 4. c. 58 ...	An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptor's <i>suprà</i> protest for honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.
8 & 9 Vict. c. 37 ... in part.	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part ; that is to say, Section twenty-four.
19 & 20 Vict. c. 97 ... in part.	The Mercantile Law Amendment Act, 1856, in part ; that is to say, Sections six and seven.
23 & 24 Vict. c. III ... in part.	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part ; that is to say, Section nineteen.
34 & 35 Vict. c. 74 ...	An Act to abolish days of grace in the case of Bills of Exchange and Promissory Notes payable at sight or on presentation.
39 & 40 Vict. c. 81 ...	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13 ...	The Bills of Exchange Act, 1878.

ENACTMENTS REPEALED AS TO SCOTLAND.

19 & 20 Vict. c. 60 ... in part.	The Mercantile Law (Scotland) Amendment Act, 1856, in part ; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen.
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HANDBOOK TO STAMP DUTIES.

Containing the Text of the Stamp Act, 1891, and of the subsequent Revenue Acts, so far as they relate to Stamp Duties, with a complete Alphabetical Table of all Documents liable to Stamp Duty.

By CHARLES H. PICKEN.

SEVENTEENTH EDITION. IN CLOTH, 2/6 NET.

APPENDIX.

(N.B.—See sect. 97 (3), *ante* p. 64, saving the Stamp Acts.)

STAMP ACT, 1891.

(54 and 55 *Victoria*, chap. 39.)

An Act

To consolidate the Enactments granting and relating to the Stamp Duties upon instruments and certain other enactments relating to Stamp Duties.

[21st July, 1891.]

2. All stamp duties for the time being chargeable by law upon any instruments are to be paid and denoted according to the regulations in this Act contained, and except where express provision is made to the contrary are to be denoted by impressed stamps only.

All duties to be paid according to regulations of Act.

*6. (1.) Where an instrument is chargeable with ad valorem duty in respect of—

Mode of calculating ad valorem duty in certain cases.

(a) Any money in any foreign or colonial currency, or

(b) Any stock or marketable security,

* *As to instruments other than bills and notes, see sect. 12 of Finance Act, 1899 (62 and 63 Vict., c. 9).*

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in British currency according to the current rate of exchange, or of the stock or security according to the average price thereof.

(2.) Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject-matter of the statement, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

General direction
as to the cancel-
lation of adhesive
stamps.

8. (1.) An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp, unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purposes, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2.) Where two or more adhesive stamps are used to denote the stamp duty upon an instrument, each or every stamp is to be cancelled in the manner aforesaid.

(3.) Every person who, being required by law to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid, shall incur a fine of ten pounds.

Bank Notes, Bills of Exchange, and Promissory Notes.

29. For the purposes of this Act the expression “banker” means any person carrying on the business of banking in the United Kingdom, and the expression “bank note” includes—

Meaning of
banker and
bank notes.

(a.) Any bill of exchange or promissory note issued by any banker, other than the Bank of England, for the payment of money not exceeding one hundred pounds to the bearer on demand; and

(b.) Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds on demand, whether the same be so expressed or not and in whatever form, and by whomsoever the bill or note is drawn or made.

30. A bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of the re-issuing.

Bank notes may
be re-issued.

31. (1.) If any banker, not being duly licensed or otherwise authorised to issue unstamped bank notes, issues, or permits to be issued, any bank note not being duly stamped, he shall incur a fine of fifty pounds.

Penalties for
issuing or
receiving an
unstamped
bank note.

(2.) If any person receives or takes in payment or as a security any bank note issued unstamped contrary to law, knowing the same to have been so issued, he shall incur a fine of twenty pounds.

Meaning of "bill of exchange."

32. For the purposes of this Act the expression "bill of exchange" includes draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money; and the expression "bill of exchange payable on demand" includes—

Bill on demand.

- *(a.) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and
- (b.) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.

* By sect. 10 of the Finance Act, 1899, post, p. 83, bills payable not more than three days after date or sight may be stamped as bills payable on demand with a [penny] stamp; and by sect. 10 of the Revenue Act, 1909, the provisions of sects. 34 and 38 of the Act of 1891 are applied to them. The penny stamp is now increased to twopence by sect. 36 of the Finance Act, 1918, post, p. 85.

33. (1.) For the purposes of this Act, the expression "promissory note" includes any document or writing (except a bank note) containing a promise to pay any sum of money.

Meaning of "promissory note."

(2.) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money.

34. (1.) The fixed duty of [one penny]* on a bill of exchange payable on demand or at sight or on presentation may be denoted by an adhesive stamp, which, where the bill is drawn in the United Kingdom, is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

Provisions for use of adhesive stamps on bills and notes.

(2.) The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

* See sect. 36, Finance Act, 1918, post, p. 85, substituting *ad.* for *id.*

35. (1.) Every person into whose hands any bill of exchange or promissory note drawn or made out of the United Kingdom comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays the bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto.

Provisions as to stamping foreign bills and notes.

(2.) Provided as follows :

(a.) If at the time when any such bill or note comes into the hands of any bonâ fide holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person ;

(b.) If at the time when any such bill or note comes into the hands of any bonâ fide holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.

(3.) But neither of the foregoing provisoes is to relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

As to bills and notes purporting to be drawn abroad.

36. A bill of exchange or promissory note which purports to be drawn or made out of the United Kingdom is, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

Terms upon which bills and notes may be stamped after execution.

37. (1.) Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper

denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, or of ten pounds if the same be so payable.

(2.) Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

38. (1.) Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall incur a fine of ten pounds, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever.

Penalty for issuing, etc., any unstamped bill or note.

(2.) Provided that if any bill of exchange payable on demand or at sight or on presentation, is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of *[one penny], and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill is, so far as respects the duty, to be deemed valid and available.

(3.) But the foregoing proviso is not to relieve any person from any fine or penalty incurred by him in relation to such bill.

* See now sect. 36, Finance Act, 1918, *post*, p. 85.

One bill only of
a set need to
be stamped.

39. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty ; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

If an instrument is in such form as to fall under two categories of stamp duty (e.g. an instrument which might be regarded as either a promissory note or a marketable security), the general rule is that it must bear the higher duty, but section 8 of the Finance Act, 1897, provides that "Where under the power conferred by any Act any county council or municipal corporation issue bills repayable not later than twelve months from their date, those bills shall, notwithstanding that by the same or any other Act they are charged or secured on any property, fund, or rate and that the statutory charge is referred to in the bills, be treated for the purposes of the Stamp Act, 1891, and the Acts amending that Act as promissory notes and not as marketable securities."

SCHEDULE.

BANK NOTE—

				£	s.	d.
For money not exceeding 1 <i>l.</i>	...	...	...	0	0	5
Exceeding 1 <i>l.</i> and not exceeding 2 <i>l.</i>	...	...	...	0	0	10
„ 2 <i>l.</i>	„	5 <i>l.</i>	...	0	1	3
„ 5 <i>l.</i>	„	10 <i>l.</i>	...	0	1	9
„ 10 <i>l.</i>	„	20 <i>l.</i>	...	0	2	0
„ 20 <i>l.</i>	„	30 <i>l.</i>	...	0	3	0
„ 30 <i>l.</i>	„	50 <i>l.</i>	...	0	5	0
„ 50 <i>l.</i>	„	100 <i>l.</i>	...	0	8	6

And see sections 29, 30 and 31.

BILL OF EXCHANGE—

Payable on demand, or at sight, or on presentation [or within three days* after date or sight] 0 0 2†

And see sections 32, 34, and 38.

* (*Finance Act, 1899, section 10, post, p. 83.*)

BILL OF EXCHANGE of any other kind whatsoever (*except a Bank Note*) and PROMISSORY NOTE of any kind whatsoever (*except a Bank Note*)—drawn, or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated in the United Kingdom.

Where the amount or value of the money for which the bill or note is drawn or made does not exceed 10 <i>l</i>.	...	...	...	0	0	2†
Exceeds 10 <i>l</i> . and does not exceed 25 <i>l</i>.	...	...	...	0	0	3
„ 25 <i>l</i> .	„	50 <i>l</i>.	...	0	0	6
„ 50 <i>l</i> .	„	75 <i>l</i>.	...	0	0	9
„ 75 <i>l</i> .	„	100 <i>l</i>.	...	0	1	0
„ 100 <i>l</i> .—						

for every 100*l*., and also for any fractional part of 100*l*. of such amount or value 0 1 0

*By the Finance Act, 1899 (section 10) the duty on a Bill of Exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or endorsed or in any manner negotiated in the United Kingdom shall, where the amount for which the bill is drawn exceeds 50*l*., be reduced so as to be—*

<i>Where the amount exceeds 50<i>l</i>. and does not exceed 100<i>l</i>.</i>	0	0	6
<i>Exceeds 100<i>l</i>., for every 100<i>l</i>., and also for any fractional part of 100<i>l</i>.</i>	...	...	...
	0	0	6

See post, p. 83.

† See section 36, *Finance Act, 1918, post, p. 85.*

Exemptions.

- (1.) Bill or note issued by the Bank of England or the Bank of Ireland.
- (2.) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.

- (3.) Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.
- (4.) Letter of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.
- (5.) Draft or order drawn by the Paymaster General on behalf of the Court of Chancery in England, or by the Accountant-General of the Supreme Court of Judicature in Ireland.
- (6.) Warrant or order for the payment of any annuity granted by the National Debt Commissioners, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.
- (7.) Bill drawn by any person under the authority of the Admiralty upon and payable by the Accountant-General of the Navy.
- (8.) Bill drawn (according to a form prescribed by Her Majesty's orders by any person duly authorised to draw the same) upon and payable out of any public account for any pay or allowance of the army or auxiliary forces or for any other expenditure connected therewith.
- (9.) Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account.

(10.) Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.

(11.) [Coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security.*]

And *see* sections 32, 33, 34, 35, 36, 37, 38, and 39.

PROMISSORY NOTE. *See* BANK NOTE, BILL OF EXCHANGE, and section 33.

PROTEST of any bill of exchange or promissory note :

Where the duty on the bill or note does not	{	The same duty as the bill or note.
exceed 1s. 		
In any other case 		0 1 0

And *see* section 90.

RECEIPT given for, or upon the payment of,
money amounting to 2*l.* or upwards 0 0 1

Exemptions.

- (1.) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.
- (2.) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.
- (3.) Receipt given for or upon the payment of any Parliamentary taxes or duties, or of money to or for the use of Her Majesty.

* By section 40 of the Finance Act, 1894 (57 and 58 Vict., c. 30), a coupon for interest on a marketable security as defined by the Stamp Act, 1891, being one of a set of coupons, whether issued with the security or subsequently issued in a sheet, shall not be chargeable with any stamp duty.

- (4.) Receipt given by an officer of a public department of the State for money paid by way of imprest or advance, or in adjustment of an account, where he derives no personal benefit therefrom.
- (5.) Receipt given by any agent for money imprested to him on account of the pay of the army.
- (6.) Receipt given by any officer, seaman, marine or soldier, or his representatives, for or on account of any wages, pay or pension, due from the Admiralty or Army Pay Office.
- (7.) Receipt given for any principal money or interest due on an exchequer bill.
- [(8.) Receipt written upon a *bill of exchange or promissory note duly stamped*, or upon a bill drawn by any person under the authority of the Admiralty, upon and payable by the Accountant General of the Navy.]

The above exemption (No. 8) is repealed by the Finance Act, 1895 (58 Vict., cap. 16), as follows :—

Section 9.—(1) Exemption numbered eight under the head "Receipt" in the first Schedule to the Stamp Act, 1891, is hereby repealed; and the duty shall be charged as if the exemption had not been contained in that Schedule; provided that neither the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of his business as a banker upon a bill of exchange or promissory note duly stamped, nor the name of the payee written upon a draft or order, if payable to order, shall constitute a receipt chargeable with Stamp Duty.

(2) This Section shall take effect as from the 1st day of July, 1895.

- (9.) Receipt given upon any bill or note of the Bank of England or the Bank of Ireland.
- (10.) Receipt given for the consideration money for the purchase of any share in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Secretary of State in Council of India, or of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively.

- (11.) Receipt endorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.
- (12.) Receipt given for any allowance by way of drawback or otherwise upon the exportation of any goods or merchandise from the United Kingdom.
- (13.) Receipt given for the return of any duty of customs upon a certificate of over entry.

And *see* sections 101, 102 and 103.

FINANCE ACT, 1899.

(62 & 63 *Victoria*, chap. 9.)

10. (1.) The duty payable under the Stamp Act, 1891, on bills of exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or endorsed or in any manner negotiated in the United Kingdom, shall, where the amount of the money for which the bill is drawn exceeds fifty pounds, be reduced so as to be—

Reduction of
duty on certain
bills of exchange.

(a.) Where the amount exceeds fifty pounds and does not exceed one hundred pounds, sixpence ; and

(b.) Where the amount exceeds one hundred pounds, sixpence for every one hundred pounds and also for any fractional part of one hundred pounds of that amount.

(2.) The stamp duty chargeable under the Stamp Act, 1891, on bills of exchange expressed to be payable at a period not exceeding three days after date or sight shall be one penny, in lieu of the duty now chargeable thereon ; and accordingly the first heading, Bill of Exchange, in the schedule to that Act, shall be read as if the words “or within three days after date or sight” were contained therein, after the word “presentation.”

This provision is completed by sect. 10 of the Revenue Act, 1909 (9 Edw. 7, c. 43), which provides—

- 10. The provisions in sects. 34 and 38 of the Stamp Act, 1891, which relate to bills payable on demand or at sight or on presentation shall apply also to bills of exchange expressed to be payable at a period not exceeding three days after date or sight which are chargeable with the duty of one penny under subsection (2) of section 10 of the Finance Act, 1899.

BILLS OF EXCHANGE (CROSSED CHEQUES) ACT, 1906.

(6 *Edward VII, chap. 17.*)

An Act

To amend section eighty-two of the Bills of Exchange Act, 1882.

[4th August, 1906.]

Amendment of
45 & 46 Vict.
c. 61, s. 82.

1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Short title.

2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906.

This Act was passed to override the case of *Capital and Counties Bank v. Gordon* (1903), A.C. 240, so far as that case decided that when a banker received the crossed cheque of a third person from a customer, and at once credited his account with the amount, the banker was collecting the cheque on his own behalf and not on behalf of his customer, and therefore was not protected by sect. 82, *ante*, p. 58.

BILLS OF EXCHANGE ACT, 1914.

(4 & 5 *George V, chap. 82.*)

An Act

To make provision in connection with the present war with respect to
Bills of Exchange payable outside the British Islands.

[18th September, 1914.]

Delay in
presentment
of a bill for
payment due
to war.
45 & 46 Vict.
c. 61.

1. Without prejudice to the operation of subsection (1) of section forty-six of the Bills of Exchange Act, 1882, delay in the presentment for payment of a bill of exchange, where the proper place for payment is outside the British Islands, is excused if the delay is, or has been, due either directly or indirectly to circumstances arising out of the present war, or to the impracticability, owing to similar circumstances, of transmitting the bill to the place of payment with reasonable safety.

Provision as
to bills of
exchange
lost owing
to war.

2. Where, in any action or proceeding upon a bill of exchange payable outside the British Islands, it is shown to the court that the bill has been lost and that the loss can reasonably be presumed to be due to circumstances attributable directly or indirectly to the present war, the court may allow proof of the bill to be given by means of a copy thereof certified by a notary public, or by means of such other evidence as the court think reasonable under the circumstances: Provided that such indemnity be given against the claims of other persons as the court may require.

Duration.

3. His Majesty may, by Order in Council, at any time determine the operation of this Act, or provide that this Act shall have effect subject to such limitations as may be contained in the Order; but, subject to the operation of any such Order in Council, this Act shall have effect during the continuance of the present war and for a period of six months thereafter.

Short title.

4. This Act may be cited as the Bills of Exchange Act, 1914.

BILLS OF EXCHANGE (TIME OF NOTING)

ACT, 1917.

(7 & 8 *George V, chap. 48.*)**An Act**

To amend the Bills of Exchange Act, 1882, with respect to the time for noting Bills.

[8th November, 1917.]

1. In subsection (4) of section fifty-one of the Bills of Exchange Act, 1882 (which relates to the time of noting a dishonoured bill), the words "it must be noted on the day of its dishonour" shall be repealed, and the following words shall be substituted therefor, namely, "it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day."

Time of Noting.
45 & 46 Vict.
c. 61.

2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917.

Short title and
construction.
6 Edw. 7, c. 17.

FINANCE ACT, 1918.

(8 & 9 *George V, chap. 15.*)

SECTION 36. (1) Twopence shall be substituted for one penny as the Stamp Duty on all bills of exchange and promissory notes chargeable under the First Schedule to the Stamp Act, 1891, with duty at the rate of one penny and drawn on or after the First day of September, Nineteen hundred and eighteen, and twopence shall accordingly be substituted for one penny in sections thirty-four and thirty-eight of the Stamp Act, 1891.

(2) The provisions of subsection (2) of section thirty-eight of the Stamp Act, 1891, shall apply so as to enable an adhesive penny stamp to be fixed on any bills of exchange to which that subsection applies being bills which are liable to a duty of twopence under this section and are stamped only with a penny stamp, as they apply with respect to the fixing of a stamp on an unstamped bill.

(3) Subsection (1) of section thirty-eight of the Stamp Act, 1891, shall not operate so as to render any bill of exchange which is liable to a duty of twopence under this section and is stamped with a penny stamp invalid for any purpose until the First day of December, Nineteen hundred and eighteen, if the person who takes or receives the bill fixes thereto an adhesive stamp of one penny and cancels the stamp.

THE CLEARING HOUSE.

RULES AND REGULATIONS (1910).*

TOWN CLEARING.

ORDINARY DAYS, EXCEPTING SATURDAYS.

Time Table.

Morning Clearing to open at 10.30 a.m. Drafts, etc., to be received not later than 11 a.m.

Afternoon Clearing to open at 2.30 p.m. Drafts, etc., to be received not later than 4.5 p.m. Returns to be received not later than 5 p.m., excepting on settling days and the first six working days in January and July, when the last delivery shall be 4.15 p.m. and Returns 5.30 p.m.

SATURDAYS.

Morning Clearing to open at 9 a.m. Drafts, etc., to be received not later than 10.15 a.m.

Afternoon Clearing to open at 12 noon. Drafts, etc., to be received not later than 1.30 p.m. Returns to be received not later than 2.15 p.m.

EXCEPTIONS.—Saturdays following Friday Stock Exchange settling days the time for the last delivery of Returns will be 2.30 p.m.; on the first two Saturdays in January and July, and the first Saturday in April and October the time will be 1.45 p.m. for the last delivery of Drafts for payment and 2.45 p.m. for Returns.

FURTHER EXCEPTIONS FOR RETURNS.—Returns on the first Saturday in January and July to be not later than 3 p.m.

* N.B.—Owing to depletion of staff through the war, clearing hours have been temporarily altered by notice, and may be further altered if required.

APRIL 1st, JUNE 30th, OCTOBER 1st, DECEMBER 31st,
THE DAY SUCCEEDING A BANK HOLIDAY,
AND ON SUCH OTHER DAYS AS THE HONORARY
SECRETARY MAY DETERMINE.

On these days the time shall be 4.15 p.m. for the last delivery, and 5.15 p.m. for the last Returns, except when either of these days is a Saturday, when the time shall be 1.45 p.m. for last delivery and 2.45 p.m. for the last Returns.

GENERAL RULES.

The total amount of the Morning and Country Delivery shall be agreed by each Clearer before leaving the Clearing House. Agreement of Morning Clearing.

All Clerks that are in the Clearing House by the time appointed for final delivery, shall be entitled to deliver their articles, though they may not have been able to pass them to the different desks before the clock strikes. Final Delivery.

All Returns in the Clearing House upon the stroke of the clock, at the time appointed for final delivery, must be received by the Clearers and credited the same day. The Inspectors are instructed to close the doors and not re-open them until such returns have been delivered. Unpaid.

Any Bank which has accepted and paid an article returned to it in error, may require repayment through the Clearing House on the following day. Returned in Error.

Notice shall be entered upon a Board at the Clearing House, giving monthly statements of those settling days at the Stock Exchange, upon which the time for receiving Returns is to be 5.30 p.m. Stock Exchange Settling Days.

With regard to all Drafts not crossed, and all Bills not receipted, sent to the Clearing House as Returns, the Clearer holding them must fully announce the particulars to the Clearing House, and if not claimed, the case must be represented to the Inspectors; but on no account can the Clearer be allowed to debit the Clearing House with the amount until an owner can be found. Uncrossed Returns.

Answer on Returns. No Return can be received without an answer in writing on the Return why payment is refused.

Answer on Return sufficient. It shall be sufficient in order that a Return shall be received and credited, that it shall have on it an answer, why returned; and no Clearer shall refuse to pass to credit any Return that shall be so marked.

Marked Articles. All the differences arising from Marked Articles of £1,000 and upwards must be finally ascertained and placed to account, before the Clearer makes up his Balance Sheet.

Drafts not to be entered at Clearing House. No Clearer shall be allowed to charge out Drafts in the Clearing-out Book at the Clearing House.

Differences overlooked. All differences of more than £1,000 that may have been accidentally passed over at night, shall be settled by a transfer at the Bank of England, the first thing the next morning.

Order in the Clearing House. The Inspectors are charged with the preservation of order and decorum in the Clearing House, and are instructed to report to the Committee of Bankers disorderly conduct on the part of any persons, calculated, in their opinion, to obstruct the adjustment of the business of the House.

METROPOLITAN CLEARING.

Time Table. The Metropolitan Clearing to open at 9 a.m. on ordinary days and 8.45 a.m. on Saturdays. Drafts on the Branches of the Clearing Banks and other Banks included in the Metropolitan Clearing area to be received not later than 10.30 a.m. (Greenwich time) on ordinary days and 9.50 a.m. (Greenwich time) on Saturdays.

It is requested that the first delivery be made immediately on the opening of business, subsequent deliveries at frequent intervals, and that every effort be made to avoid heavy deliveries at the last moment.

"In" side to be entered at the Clearing House. All the "In" Clearing to be entered at the Clearing House.

The agreement of charges to take place as soon as possible after the "In" side has been entered. Agreement of Charges.

The Drafts are to be sent to the Head Offices when entered and not to be detained at the Clearing House until the charges are agreed. Drafts not to be delayed at the Clearing House.

Marked articles and missing cheques are to be looked up on the "Out" side. If a difference is for £1,000 and upwards the particulars, if available, to be given to the paying Bank the same day and every effort is to be made to settle the difference forthwith. If particulars are not available the settling of the error may be held over to the following day. Marked Articles and Missing Cheques.

All differences in the Metropolitan Clearing to be adjusted as quickly as possible through the Town Clearing. Adjustment of Differences.

Sheets will be provided for the entering of the totals of the "Out" and "In" sides of the individual charges and wrongly delivered lists. These sheets are to be handed to the Inspectors not later than 12.30 o'clock on ordinary days and 12 o'clock on Saturdays. The final totals to be carried on to the Town Clearing Balance Sheet in the place provided and agreed with the Inspectors before closing. Sheets for Totals.

Returns in the Metropolitan Clearing must be delivered at the Clearing House through the afternoon Town Clearing at the earliest possible moment, but not later than 4.5 p.m. on ordinary days and 1.30 p.m. on Saturdays. Returns.

It will be permissible for a Bank to pay any of its Metropolitan Branches under protest on Saturdays, when necessary. Paying under Protest.

Bills, included in remittances to Branches, that avail themselves of the protest rule, if dishonored and received too late to return to the collecting Banker must be protected by the returning Banker.

Dishonored cheques, from a Branch paid under protest, received by the Head Office or Agent too late for delivery at the Clearing House or to the Head Office of the presenting Bank must be returned by post direct to the

crossing Bank or Branch and debited at the Clearing House on the next business day by slip as used in the Country Cheque Clearing.

Wrongly
delivered Drafts.

Wrongly delivered Drafts are to be adjusted as far as possible before agreeing the charges. No alteration is to be made in the total after agreement.

Drafts wrongly delivered in the Metropolitan Clearing but payable through the Town Clearing at the Bank to which they have been presented, if discovered too late for adjustment at the Clearing House, may be transferred internally without reference to the Clearing House.

Drafts wrongly delivered payable through the Metropolitan Clearing and discovered too late for adjustment in the Clearing House are to be debited on Sheets provided for the purpose, the cheques to be placed in envelopes addressed to the paying Bank and delivered to the Inspectors at the Clearing House as quickly as possible, but not later than 10.45 a.m. (Greenwich time) on ordinary days and 10 o'clock (Greenwich time) on Saturdays.

The Inspectors will use all diligence in dispatching these envelopes in the hope of catching the collecting Messengers before they leave the Head Offices. It is not intended that these Messengers should be delayed on account of this delivery, and should they have left the Head Offices with the charges the wrongly delivered articles shall be returned to the presenting Banker.

Drafts wrongly delivered in the Metropolitan Clearing payable in the Country Cheque Clearing discovered too late for adjustment in the Clearing House to be debited to the crossing Banker on the sheets above referred to. These cheques to be sent to the Inspectors of the Clearing House in envelopes addressed to the presenting Banker not later than 10.45 a.m. on ordinary days and 10 o'clock on Saturdays.

All wrongly delivered Drafts received in the Clearing House envelopes to be entered by the Banks accepting on the Credit side of the lists provided.

Machines will be allotted for use in the Metropolitan Use of Machines.
Clearing under the following conditions :—

The “In” Clearing to be entered as quickly as possible.

Agreement of charges is not to be attempted at the expense of entering.

The Machines are to be surrendered without delay after entering is finished, and adjournment to the Country Cheque Balance Room or Ground Floor for the purpose of agreeing is requested.

Banks wishing to use the Clearing House Machines for listing to their Branches must surrender these Machines not later than 10.45 a.m. on ordinary days and 10 o'clock on Saturdays.

The General Rules of the Clearing House shall be General Rules.
observed in so far as they apply.

COUNTRY CHEQUE CLEARING.

A Clearing to be held in the middle of each day for Object of
Country Cheque
Clearing.
the interchange, among the London Bankers, of Cheques on their Correspondents in the Country, placed in their hands for collection.

Each London Banker to remit for collection to his Despatch to
Country Banks.
Country Correspondents the Cheques drawn upon them, saying, “Please say if we may debit you £ for cheques enclosed.”

Country Bankers wishing to avail themselves of this Crossing of
Remittances.
Clearing to remit their Country Cheques to their own London Agent, to stamp across them their *own name and address, and that of their London Agent.*

Any Country Bank not intending to pay a Cheque Unpaid
returned direct.
sent to it for collection, to return it direct to the Country *or Branch Bank*, if any, whose name and address is across it.

Crediting
London Agents.

Each Country Banker to write by return of post to its London Agent in reply, "We credit you £ for Cheques forwarded to us for collection in yours of ." Adding in case of non-payment of any such Cheques, "having deducted £ for Cheque returned to Messrs. at , and £ returned to Messrs. at ."

Time Table.

Country Clearing to open at 10.30. Drafts, including Returns, to be received not later than 12.30, except on Saturdays, when the time shall be 10 o'clock for the opening, and 11.30 for the last delivery, including Returns. The door to be closed on the stroke of the clock, as in the Town Clearing.

(It is required that all Banks shall make a delivery as near to 10.30 as possible, on ordinary days, and 10 o'clock on Saturdays. In no case shall the first delivery be later than 10.45 on ordinary days, and 10.30 on Saturdays. The remaining deliveries at necessary intervals.)

In-side to be
entered at the
Clearing House.

All the In-Clearing to be entered at the Clearing House.

Castings.

Castings of about 50 entries to be given with all the early deliveries of the Out-Clearing.

(It is expected that the last castings will be given to the In-Clearers not later than 5 minutes after the last delivery of Cheques.)

Agreeing
Charges.

All charges to be agreed at the Clearing House on the day of the work, and the Clerk responsible for the Outside shall make it his business to go to the desk of the Clerk entering his charge on the In-side for this purpose.

Retaining
Cheques for
inspection of
Out-Clearer.

It shall be necessary for the In-Clearer to retain for the inspection of the Out-Clearer, the Cheques of any casting, or any particular Cheque in which a difference occurs.

All wrongly delivered Cheques discovered before the Out and In-Clearers agreeing any charge have left the Clearing House, shall be adjusted by the Clearers, but any discovered after either Clearer has left the House shall not be deducted from the already agreed amount, but shall be entered on the debit side of lists provided for the purpose, the Cheque or Cheques to be sent to the proper forwarding Agent, who shall also enter them on the Credit side of the list provided ; these lists to be handed to the Clearing House Inspector on the morning following, and it shall be his duty to agree the same. The total of these lists to be brought on to the end of the Balance Sheet.

Treatment of
wrongly
delivered
Cheques.

The Balance Sheet, together with the particulars of the Out- and In-sides, shall be handed to the Inspector on the morning following the day of the work, and it shall be his duty to check the Balances, and to call attention to any charge that may differ, as soon as possible.

Balance Sheets.

By order of the Committee,

LONDON BANKERS' CLEARING HOUSE,
LOMBARD STREET, E.C.

October, 1910.

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